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**In the Supreme Court of the United States**

OCTOBER TERM, 1982

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LOUISIANA PUBLIC SERVICE COMMISSION,

*Petitioner*

*v.*

FEDERAL COMMUNICATIONS COMMISSION AND  
UNITED STATES OF AMERICA,

*Respondents*

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT**

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**BRIEF AMICUS CURIAE STATE OF CONNECTICUT  
IN SUPPORT OF PETITION FOR A  
WRIT OF CERTIORARI**

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**PETITION FOR A WRIT OF CERTIORARI**

The State of Connecticut has appeared as Amicus Curiae before the United States Court of Appeals for the District of Columbia and pursuant to rule 36(4) is filing this amicus curiae brief in support of the request of the petitioners, Louisiana Public Service Commission (Case No. 82-1331) that the Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered November 12, 1982.

**INTEREST OF THE STATE OF CONNECTICUT**

The State of Connecticut has in one form or another been regulating intrastate telephone service and tariffs for approximately one hundred years. Connecticut's regulatory responsi-

bilities reside in Connecticut Department of Public Utility Control.

Through its decision in the Computer II final decision 77 FCC 2d 384 (1980) the Federal Communications Commission usurped valid intrastate regulation of customer-premise equipment, *sui generis*, by preempting the states from such regulation.

This intrusion into the valid exercise of the state police power exceeds the statutory authority of the Communications Act of 1934 and establishes a theory of preemption which permits administrative agencies the exercise constitutional powers reserved solely to the Congress.

## REASONS FOR GRANTING THE WRIT

### THE FEDERAL COMMUNICATIONS COMMISSION PREEMPTION OF STATE RATEMAKING WAS NOT BASED ON ANY CONGRESSIONAL EXPRESSION

Your Amicus believes that the Federal Communications Commission (FCC) powers have been misconstrued and that the FCC invaded an area of overwhelming state concern without Congressional authority. The preemption of a state's fundamental exercise of police power to regulate its public utilities is not easily accomplished. States are reserved the exercise of their police power under the provisions of the tenth Amendment to the Constitution of the United States which provides: "The powers not delegated to the United States, are reserved to the States respectively, or to the people." Where Congress has not expressly preempted states from a field of regulation, as in the instant matter, then the Court may test for implied preemption. In challenges to state laws that involve a state's traditional exercise of police power, the initial presumption is that the federal act will not super-

sede the state law unless it is the clear and manifest purpose of Congress. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 156 (1978); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *Rice v. Sante Fe Elevator Corp.*, 331 U.S. 218, 230, (1947).

In reviewing the limits of Congressional preemption under the Communications Act this Court in *Head v. New Mexico Board of Examiners* 374 U.S. 424 required positive evidence of legislative intent to preclude state regulation, holding: "(I)n the absence of positive evidence of legislative intent to the contrary, we cannot believe Congress has ousted the States from an area of such fundamentally local concern." 374 U.S., at pages 431-432.

In this instant matter the Congressional intent was to reserve intrastate ratemaking to the states. Various sections of the Communications Act specifically affirm Congressional intent to preserve the states powers to regulate their telephone companies. (see 47 USC 221 (a) and (b) 47 USC 152 (b)) Thus, the only positive evidence of Congressional intent in this area is to leave intact the State's traditional regulatory authority. The FCC's conclusion to the otherwise constitutes an administrative amendment to its statutory jurisdiction, a power reserved only to Congress.

The FCC's self generated power to preempt State regulation is not well founded and should be reversed.

## CONCLUSION

As discussed in the petitioner's brief more fully, the FCC's motivations for preempting the states are not the motivations of Congress. Therefore the State of Connecticut respectfully requests that this Court issue the requested writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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